

FILED

MAR 14 2008

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DW DEPUTY CLERK

JERRY RAY ELLISON,
Individually and as Next Friend of
C.E., a minor,

Plaintiffs

v.

HOME DEPOT USA, INC.,
TECHNIBILT, LTD.,
CARI-ALL PRODUCTS, INC., and
SOCIETE DE GESTION NORDERON,
INC.,

Defendants

CIVIL ACTION NO: W08CA074

**DEFENDANT TECHNIBILT, LTD'S
ORIGINAL ANSWER**

Defendant Technibilt, Ltd. files this Original Answer and would respectfully show this Court the following:

I. ANSWER

I. DISCOVERY

1. This paragraph states a legal conclusion that does not require an answer. To the extent an answer is required, Defendant denies the allegations therein. Defendant further notes this lawsuit has been removed to federal court and therefore, the Texas Rules of Civil Procedure are not applicable.

II. PARTIES

2. Defendant admits that Plaintiffs allege they are residents of McLennan County, Texas.

3. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations pertaining to Defendant Home Depot USA, Inc's corporate status, place of business, or registered agent, and therefore, Defendant denies same.

4. Defendant admits that it is a foreign corporation and that it may be served through the Texas Secretary of State. Defendant denies the remainder of the statements in this paragraph.

5. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations pertaining to the means by which Defendant Cari-All, Inc. may be served with process, , and therefore, Defendant denies same.

6. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations pertaining to the means by which Defendant Societe de Gestion Norderon, Inc. may be served with process, and therefore, Defendant denies same.

III. JURISDICTION AND VENUE

7. Defendant denies all of the allegations in this paragraph.

8. Defendant is without sufficient information of knowledge to form a belief as to the truth of Plaintiffs' allegations pertaining to the location where a "substantial part of the events or omissions giving rise to the claim occurred," and therefore, Defendant denies same.

IV. BACKGROUND FACTS

9. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

10. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

11. Defendant admits that it is in the business of designing, manufacturing, marketing, and distributing shopping carts. Defendant is without sufficient information or knowledge to form a

belief as to the truth of the remainder of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

12. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

13. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

V. COUNT ONE: NEGLIGENCE

14. Defendant denies the allegations in this paragraph.

15. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

16. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

17. Defendant denies the allegations in this paragraph (and all sub-paragraphs identified as A through I) to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

18. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

19. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

VI. COUNT TWO: STRICT LIABILITY

20. Defendant denies the allegations in this paragraph.

21. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

22. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

23. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

24. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

25. Defendant is without sufficient information or knowledge to form a belief as to the truth of Plaintiffs' allegations in this paragraph, and therefore, Defendant denies same.

VII. COUNT THREE: BREACH OF WARRANTY

26. Defendant denies the allegations in this paragraph.

27. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

28. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

29. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

VIII. COUNT FOUR: GROSS NEGLIGENCE

30. Defendant denies the allegations in this paragraph.

31. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

32. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

33. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

IX. TEXAS CIVIL PRACTICE AND REMEDIES CODE § 82.008

34. This paragraph states a legal conclusion that does not require an answer. To the extent an answer is required, Defendant denies the allegations therein.

35. This paragraph states a legal conclusion that does not require an answer. To the extent an answer is required, Defendant denies the allegations therein.

X. DAMAGES

36. Defendant denies the allegations in this paragraph .

37. Defendant denies the allegations in this paragraph and denies that Plaintiffs are entitled to the relief sought.

38. Defendant denies the allegations in this paragraph (and all sub-paragraphs identified as A through C), and denies that Plaintiffs are entitled to the relief sought.

39. Defendant denies the allegations in this paragraph (and all sub-paragraphs identified as A through C), and denies that Plaintiffs are entitled to the relief sought.

40. This paragraph states a legal conclusion that does not require an answer. To the extent an answer is required, Defendant denies the allegations therein.

XI. EXEMPLARY DAMAGES

41. Defendant denies the allegations in this paragraph .

42. Defendant denies the allegations in this paragraph to the extent they allege acts, omissions, duties, breaches of duties, knowledge, or lack of knowledge against Defendant, and

denies that Plaintiffs are entitled to the relief sought. With regard to the allegations against Defendant's co-defendants, Defendant is without sufficient information or knowledge to form a belief as to their truth and therefore, Defendant denies same.

XII. JURY DEMAND

43. This paragraph states a legal conclusion that does not require an answer. To the extent an answer is required, Defendant denies the allegations therein.

XIII. REQUEST FOR DISCLOSURE TO DEFENDANTS

44. This paragraph states a legal conclusion that does not require an answer. To the extent an answer is required, Defendant denies the allegations therein. Defendant further notes this lawsuit has been removed to federal court and therefore, the Texas Rules of Civil Procedure are not applicable.

XIV. PRAYER

45. Defendant denies that Plaintiffs are entitled to the relief sought.

II. DEFENSES

46. Plaintiffs' claims are barred in whole or in part because Plaintiffs failed to mitigate their damages.

47. Plaintiffs' injuries and damages, if any, in whole or in part, were caused by or due to events, accidents, collisions, conditions, or incidents, physical, medical, and/or mental which pre-existed the incident made the basis of this lawsuit.

48. Plaintiffs' injuries and damages, if any, in whole or in part, were caused by or due to events, accidents, collisions, conditions, or incidents, physical, medical, and/or mental which occurred after and subsequent the incident made the basis of this lawsuit.

49. In the unlikely event that Plaintiffs prove that they sustained injuries or incurred damages as they have alleged, Defendant asserts that these damages or injuries were caused, in whole or in part, by the acts or omissions of persons or parties other than Defendant and therefore were caused by events and persons or parties which constitute an intervening, superceding or new and independent cause of the incident made the basis of this suit and thus, Plaintiffs' are not entitled to recover from Defendants.

50. Defendant further pleads, if same be necessary, that a proximate cause and/or producing cause, or, in the alternative, the sole proximate cause or the producing cause of Plaintiffs' damages, if any, was the negligence of the Plaintiffs and/or the negligence of other persons or entities not controlled by or the responsibility of Defendant.

51. Defendant is not liable to Plaintiffs because the shopping cart Plaintiffs allegedly used was not defective and was not a producing cause of the incident made the basis of this lawsuit and/or any injury alleged to have been sustained by Plaintiffs.

52. Plaintiffs assumed the risk of any and all injuries alleged to have been sustained by them.

53. Defendant has not made any misrepresentations that could possibly be a producing cause of the incident made the basis of this lawsuit and/or any injury alleged to have been sustained by Plaintiffs.

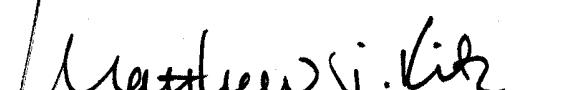
54. Defendant is not liable to Plaintiffs because the shopping cart was fit for the ordinary purpose for which it was intended to be used and was not a proximate cause of the incident made the basis of this lawsuit and/or any injury alleged to have been sustained by Plaintiffs.

55. Defendant is not liable to Plaintiffs because the shopping cart functioned normally and was not a proximate cause of the incident made the basis of this lawsuit and/or any injury alleged to have been sustained by Plaintiffs.

III. CONCLUSION

Defendant respectfully requests that Plaintiffs take nothing by this suit and that this Court may award Defendant all such other and further relief to which it has shown itself to be justly entitled.

Respectfully submitted,

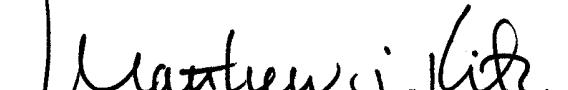


JAMES H. MOODY III
State Bar No. 03820050
MATTHEW J. KITA
State Bar No. 24050883
QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (phone) / (214) 871-2111 (fax)

ATTORNEYS FOR DEFENDANT
TECHNIBILT, LTD.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the forgoing document has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure and all applicable Local Rules on March 13, 2008.



MATTHEW J. KITA